IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.9.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

C.M.A.No.216 of 2000 &
C.M.P.No.2042 of 2000

M/s.National Insurance Co. Ltd.,
Salem.
... Appellant (II Respondent)

vs.

1.Dr.Valarmathi Nambi
2.Sivaramakrishnan
3.Balavignesh
4.S.Indrani

(4th Respondent exparte in Lower Court)
(Declared the 2nd Respondent as major
and dischange the Guardian from his
Guardianship vide order dated 29.10.2002
made in CMP.No.199331/2001.
3rd Respondent declare as major
and the 1st respondent discharged
from the guardianship vide order
of this Court dated 22.11.2005
and made in CMP.No.15039 & 15040 of 2005) ... Respondents.

C.M.A. filed against the order dated 24.11.1999 made inM.C.O.P.No.882 of 1997 on the file of Principal District Judge (Motor Accident Claims Tribunal), Salem.

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For appellant :: Mr.M.B.Raghavan

For respondents:: Mr.P.Jegadeesan for R1 to R3
R4-NDW

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JUDGMENT

(Delivered by P.D.DINAKARAN,J.)

The Insurance Company is the appellant in this appeal. The respondents/claimants are the widow and two children of the deceased Dr.Thirumalai Nambi who died in road accident that took place on 28.7.1996, while he was driving TATA Sumo Van bearing registration No.TN-27-E-4506, which was, admittedly not owned by him, but owned by the fourth respondent, who remained ex parte in the Tribunal.

2. Contending that the deceased was a doctor by profession as also an agriculturist, earning a monthly income of Rs.32,000/-, the respondents 1 to 3 filed the claim petition seeking a total compensation of Rs.40 lakhs under the various heads.

3. The Insurance Company resisted the claim on ground that the deceased is not a third party entitled to compensation as he himself was driving the vehicle in question at the time of accident.

4. On the basis of the above contentions, the Tribunal framed the following issues:

1.Whether the accident took place due to the rash and negligent act of the person who drove the TATA Sumo Van?
2.Whether the petitioners/claimants are entitled to compensation?
3.If so, to what amount?

5. Before the Tribunal, the claimants examined two witnesses, P.Ws.1 and 2 and marked 9 documents as Ex.P-1 to P-9. On the side of respondents, the Administrative Officer of the Insurance Company was examined as R.W.1 and the Insurance Policy was marked as Ex.R-1.

6. The Tribunal, accepting the evidence of co-occupant, P.W.2, who was concededly the driver of the vehicle, that there was brake failure of the vehicle in question as a result of which the accident took place, came to the conclusion that the accident occurred not due to the rash and negligent driving of the deceased, but due to the mechanical defect of the vehicle. The Tribunal therefore held that since the owner of the vehicle who had entered into the Insurance Policy with the appellant herein, have not maintained the vehicle properly, the claimants are entitled to compensation and accordingly, awarded a sum of Rs.14,50,000/- as compensation. Challenging the same, the present appeal has been preferred by the Insurance Company.

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7. Learned counsel appearing for the appellant is not challenging the quantum of compensation, but he questions the finding of the Tribunal as to liability of the appellant. According to him, at the time of accident the vehicle was driven by the deceased himself, who is not a third party, not covered by the Insurance policy and hence, the claimants are not entitled to any compensation.

8. On the other hand, learned counsel appearing for the respondents 1 to 3/claimants reiterated the same stand taken before the Tribunal.

9. It is not in dispute that the deceased was an occupant of the vehicle at the time of accident and the said vehicle is covered by "Private Car Insurance B Policy" with the appellant Insurance Company.

10. For the purpose of deciding the question whether the claimants are entitled to any compensation for the death of deceased/victim, who himself drove the vehicle in question, we have gone through the order of the Tribunal. The Tribunal has recorded a finding that the accident took place not due to rash and negligent driving of the deceased/victim, but due to the brake failure of the vehicle and admittedly, the said finding is not challenged by the appellant. In such situation, the owner of the vehicle, namely, the fourth respondent herein is liable to pay compensation for not properly maintaining the vehicle, which is covered by the Insurance Policy with the appellant herein.

11. It is settled law that Insurance Company have to honour the contract entered into with the insured unless the terms of the contract excludes a person from the benefit of the contract and the persons mentioned in the contract are not entitled to the benefit. In the present case, the parties are governed by the Private Car Insurance B Policy, section-II of which deals with the liability to third parties. Clause (i) of section-II (1) of the said Policy provides for compensation in the case of death of or bodily injury to any person including occupants carried in the motor car (provided such occupants are not carried for hire or reward), but except so far as is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of an in the course of the employment of such person by the insured.

12. A plain reading of the above-said clause shows that the expression, "occupants" does not exclude a person who drives the vehicle. Therefore, the deceased, who had driven the vehicle at the time of accident, more particularly in a case where the vehicle suffered from mechanical defect resulting in the accident, is entitled for compensation. Hence, we are unable to appreciate the arguments advanced by the learned counsel for the appellant in this regard.

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In the result, the appeal fails and the same is dismissed. No costs. Connected C.M.P. is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

na.

To

1. The Principal District Judge
(Motor Accident Claims Tribunal),
Salem

2. The Record Keeper,
V.R.Section, High Court, Madras.

1 cc To Mr.P.Jagadeesan, Advocate, SR.43086.
1 cc To Mr.N.Vijayaraghavan, Advocate, SR.43107.

C.M.A.No.216 of 2000

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